

## "FIAT Melfi Case": reinstatement in the company and resumption of duties in case of a dismissal held to be anti-trade union

The dismissal of the three workers at the Fiat plant in Sata di Melfi has had a massive media impact, with the Labour Court holding the dismissals to be unlawful and ordering the reinstatement of the workers at the plant. Interest was further peaked by the employer's decision not to allow the workers to resume work at the plant's production line (even though they were allowed to enter the site) and their appeal to President of the Republic Napolitano for their trade union rights to be respected.

The affair, as is known, has its origins in the complaint brought by Fiat Sata regarding the conduct of three workers who were members of FIOM-CGIL trade union, two of whom were trade union representatives. The events occurred in July 2010 and form part of a wider series of strikes affecting the plant triggered by a restructuring plan launched by Fiat at national level. The three workers held a meeting in front of a robot arm supplying production lines. According to Fiat Sata the conduct prevented the movement of the robot arms, thus impeding the work of the company; according to the trade union, however the workers were in front of the robot arm which was already stationary for reasons unconnected to their conduct and consequently the conduct did not cause any damage to the company's work.

The case was brought to the attention of the Labour Court of Melfi by way of an application under section 28 of the Workers' Charter claiming anti-trade union practices. The Labor Court ruled that there was insufficient evidence that the three workers had acted intentionally (i.e., willfully shutting down the production lines) and thus held their dismissal was not justified, and consequently they had to be reinstated.

When, on 23 August 2010, the three workers went to the Melfi plant to resume work, however, the plant managers prevented them from entering the plant and let them sit in a trade union meeting room; solely to carry out union activities.

As a result of this conduct, the trade union FIOM-CGIL stated it wished to file a complaint pursuant to section 650 of the Criminal Code on grounds of alleged non-compliance with the reinstatement order. In addition, the case will be heard in court again, in October 2010, because Fiat Sata has appealed the decision of the court of first instance.

This case has brought to the fore the issue of achieving compulsory performance of a reinstatement order.

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Settled case law on this matter exists according to which a distinction must be made between the obligation to allow reinstatement in the company, deemed subject to forced execution, and "*complete resumption of duties specifically performed by the worker*" (so-called actual reinstatement, on the other hand, not subject to forced execution). The non-coercible nature of the actual reinstatement arises from the requisite that the employer and employee collaborate in order to achieve performance in the exercise of employment, which performance cannot be "physically imposed" upon the employer by the intervention of the court officer.

The case, however, also raises additional issues as to whether:

- a right to compensation exists for the harm to the workers' professionalism, considering the impossibility of resuming their duties constitutes a breach of section 2103 of the Civil Code; and
- the failure to comply with the order of the Labour Court may constitute a punishable offence pursuant to section 650 of the Criminal Code.

In relation to the latter issue, on the basis of the principles that inspire the protection set out under section 28 of the Workers' Charter, the breach of section 650 of the Criminal Code does not arise from the failure to reinstate the worker in the duties performed but from the perpetration of the anti-trade union conduct forming the subject matter of the proceedings under section 28. Section 28 implements a general repression of anti-trade union conduct of the employer in order to guarantee the "*carrying out of the activity and trade union freedom*" protected by section 39 of the Constitution (Supreme Court, Joint Session 17 February 1992, no. 1916).

In order to decide whether the offence under section 650 of the Criminal Code has been committed it will therefore be necessary to ascertain whether the worker who has been allowed to return to the company can carry out his trade union work normally. This also applies where the worker has not been assigned the duties previously been performed.

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